

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Brandon Cruz,

Plaintiff,

-against-

The City Of New York, "John" Maye, the first name being unknown, and "John Doe" the name being fictitious and presently unknown, being detectives employed by the City of New York Police Department,

Defendants.

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**ANSWER TO COMPLAINT  
BY DEFENDANT CITY OF  
NEW YORK**

**JURY TRIAL DEMANDED**

07 CV 6545 (DAB)

Defendant the City of New York, by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to the complaint, respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the complaint, except admits that plaintiff purports to bring this action as stated therein.
2. Denies the allegations set forth in paragraph "2" of the complaint, except admits that plaintiff purports to bring this action as stated therein and admits that plaintiff purports that jurisdiction is proper as stated therein.
3. Denies the allegations set forth in paragraph "3" of the complaint, except admits that plaintiff purports that venue is proper as stated therein.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "4" of the complaint.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "5" of the complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the complaint.

7. Denies the allegations contained in paragraph "7" of the complaint, except admits that defendant City of New York is a municipal corporation located in New York State, and respectfully refers the Court to the New York City Charter and the Administrative Code of the City of New York for a full and complete statement of the powers and authority of the City of New York and its agencies.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the complaint.

9. Defendant states that the allegations set forth in paragraph "9" of the complaint constitute conclusions of law rather than averments of fact and, accordingly no response is required. To the extent a response is required, defendant denies the allegations.

10. Defendant states that the allegations set forth in paragraph "10" of the complaint constitute conclusions of law rather than averments of fact and, accordingly no response is required. To the extent a response is required, defendant denies the allegations.

11. Denies the allegations set forth in paragraph "11" of the complaint, except admits that the New York City Office of the Comptroller received a notice of claim purportedly signed by Brandon Cruz.

12. Denies the allegations set forth in paragraph "12" of the complaint, except admits that the New York City Office of the Comptroller received a notice of claim purportedly signed by Brandon Cruz and containing the name and address of a person purporting to be Cruz's attorney.

13. Denies the allegations set forth in paragraph “13” of the complaint, except admits that the notice of claim sets forth a date and time of certain events.

14. Denies the allegations set forth in paragraph “14” of the complaint, except admits that a settlement of the claim has not been reached.

15. Denies the allegations set forth in paragraph “15” of the complaint, except admits that the action was commenced with the filing of the complaint on or about July 20, 2007.

16. Denies the allegations set forth in paragraph “16” of the complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the complaint.

18. Denies the allegations set forth in paragraph “18” of the complaint.

19. Denies the allegations set forth in paragraph “19” of the complaint.

20. Denies the allegations set forth in paragraph “20” of the complaint.

21. Denies the allegations set forth in paragraph “21” of the complaint.

22. Denies the allegations set forth in paragraph “22” of the complaint.

23. Denies the allegations set forth in paragraph “23” of the complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “24” of the complaint.

25. Denies the allegations set forth in paragraph “25” of the complaint.

26. Denies the allegations set forth in paragraph “26” of the complaint.

27. Denies the allegations set forth in paragraph “27” of the complaint.

28. In response to the allegations set forth in paragraph “28” of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

29. Denies the allegations set forth in paragraph “29” of the complaint.
30. Denies the allegations set forth in paragraph “30” of the complaint.
31. In response to the allegations set forth in paragraph “31” of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.
  32. Denies the allegations set forth in paragraph “32” of the complaint.
  33. Denies the allegations set forth in paragraph “33” of the complaint.
  34. In response to the allegations set forth in paragraph “34” of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.
    35. Denies the allegations set forth in paragraph “35” of the complaint.
    36. Denies the allegations set forth in paragraph “36” of the complaint.
    37. In response to the allegations set forth in paragraph “37” of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.
      38. Denies the allegations set forth in paragraph “38” of the complaint.
      39. Denies the allegations set forth in paragraph “39” of the complaint.
      40. In response to the allegations set forth in paragraph “40” of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.
        41. Denies the allegations set forth in paragraph “41” of the complaint.
        42. Denies the allegations set forth in paragraph “42” of the complaint.

43. In response to the allegations set forth in paragraph "43" of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

44. Denies the allegations set forth in paragraph "44" of the complaint.

45. Denies the allegations set forth in paragraph "45" of the complaint.

46. In response to the allegations set forth in paragraph "46" of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

47. Denies the allegations set forth in paragraph "47" of the complaint.

48. Denies the allegations set forth in paragraph "48" of the complaint.

49. Denies the allegations set forth in paragraph "49" of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

50. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

51. Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any Act of Congress providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

52. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the Defendants.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

53. At all times relevant to the acts alleged in the complaint, Defendant's City of New York's agents and officials acted reasonably in the proper and lawful exercise of their discretion. Therefore, defendant City is entitled to governmental immunity from liability.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

54. Punitive damages cannot be recovered from the City of New York.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

55. Plaintiff has not complied with the conditions precedent to suit.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

56. There was probable cause for plaintiff's detention.

**WHEREFORE**, defendant City of New York requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated:           New York, New York  
                  October 15, 2007

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Defendant City of New York  
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(212) 788-0303

By:

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LISA RABINOWITZ (LR 7946)  
Assistant Corporation Counsel